

1. **Scrap metal Dealer Act 2013 Fee Setting**

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**Portfolio:** Safer Communities

**Ward(s) affected:** All Wards

**Purpose of the Report**

The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013 and is due to take effect from 1<sup>st</sup> October this year.

The Act provides that an application for a licence must be accompanied by a fee set by the Local Authority and this report requests that the Committee set that fee.

**Recommendations**

**That the Committee agree a fee for the licensing of Scrap Metal Dealers.**

**That separate fees be set for collectors licences and site licences.**

**Reasons**

The introduction of the Scrap Metal Dealers Act from October 2013 will replace all previous legislation relating to Scrap Metal Dealers and Motor Salvage Operators.

The Council is required to set appropriate fees for the licences in the Act.

1. **Background**

The Scrap Metal Dealers Act replaces the previous registration system for scrap metal dealers created by the 1964 Scrap metal Dealers Act. Every scrap metal dealer will be required to have a licence and operating without one will be a criminal offence. Under the new legislation the definition of a scrap Metal dealer is extended so it now includes motor salvage operators, and the provisions in the Vehicles (crime) Act 2001 under which they operate will end once the new Act comes into effect

Under the previous Act the Council had to register anyone who notified it that they were operating as a scrap metal dealer; under the new regime the Council will be able to refuse to grant a licence where the applicant is judged not to be a suitable person to operate as a scrap metal dealer.

The new regime will be in force from 1<sup>st</sup> October 2013, but with a transitional period to ensure a smooth hand over from the old system to the new.

In order for anyone to carry on a business as a scrap metal dealer they will have to have a licence. The licence will last for three years and trading without the licence is a criminal offence.

There are two types of licence specified in the Act:

**Site Licence**

All the sites where a licensee carries on business as a scrap metal dealer have to be identified, and a site manager has to be named for each site. This licence allows the licensee to transport scrap metal to and from those sites from any Local Authority Area.

## Collectors Licence

This allows the licensee to operate as a collector in the area of the issuing Local Authority. It does not allow the collector to operate in any other Local Authority, so a separate licence has to be obtained from each council the collector wish to operate in. The licence does not authorise the licensee to operate a site; to do so they will need a site licence from the relevant Local Authority.

It should be noted that a dealer cannot hold more than one type of licence in any one Local Authority area. They have to decide whether they are going to have a site or a mobile licence in any one area.

## 2. Issues

### Application Fees

The EU services directive states that a licence fee can only be used to pay for the cost associated with the licensing process. In effect, each local authority must ensure that the income from fees charged for each service does not exceed the costs of providing the service.

Any application must be accompanied by a fee; the fee must be set by the Local Authority. The fee must be set having regard to the Home Office Guidance which has now been issued and is attached to this report. The local Authority must also have regard to the requirements of the European Union Services Directive and any licensing case law, of which the recent case in the Court of Appeal of *Hemming v Westminster City Council* is especially relevant. It is proposed that the Licensing Committee be given delegated authority to set the application fees.

Local Authorities must specify fees for each category of application (site licence and collectors licence). Local Authorities must specify fees which are payable by licence applicants for the **assessment and administration activity** within the new licensing regime brought about by the 2013 Act. They should do this by identifying what they need to do to assess the type of licence in question and calculating their best estimate of the cost to be incurred by the Authority.

**In effect, the costs of a licence should reflect the time spent assessing and administering applications, processing them, having experienced licensing officers review them, storing them, consulting on the suitability of an applicant, reviewing relevant offences, the decision on whether to issue a licence, as well as the cost of issuing licences in a format that can be displayed. Consulting the local authority's enforcement records in order to determine the suitability of the applicant is chargeable within the licence fee costs as are costs associated with contested licence applications.**

The LGA Guidance states that the following can be taken into account when fee setting:

- All the activity required with processing and granting a licence such as considering applications and assessing the suitability of the applicant
- The costs of staff associated with supporting the service, including senior staff with managerial responsibility for the service
- Support provided by other parts of the council to the licensing team such as legal services and any recharges there might be for rooms, heating and lighting from the centre of the authority
- The cost of providing advice and guidance to applicants on what will be a new process
- Carrying out inspections and ensuring compliance with the law
- Training for staff and councillors in the requirements of the new legislation

- Costs associated with consulting other agencies and bodies when considering if an applicant is a suitable person
- Working with any partners in ensuring compliance
- Making and reviewing any policies in relation to the operation of the new licensing regime
- Issuing the licence
- Any officer time spent providing information for inclusion in the register of dealers.

The licence fee cannot be used to support enforcement activity against unlicensed scrap metal dealers. Any activity taken against unlicensed operators must be funded through existing funds. Such activity against unlicensed operators includes issuing closure notices; with applications for closure orders subsequently made to a magistrates court. The cost of applying to the Magistrates Court for a warrant (Section 16(5)(6) and (7) of the 2013 Act) for entry to unlicensed premises, by force if necessary, will incur legal costs to be borne by the local authority and police.

#### 4. **Proposal**

That a fee of £150 be set for a collectors Licence

That a fee of £200 be set for a Site Licence.

#### 5. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- creating a cleaner, safer and sustainable Borough
- creating a Borough of opportunity
- creating a healthy and active community
- transforming our Council to achieve excellence

#### 7. **Legal and Statutory Implications**

The Council has a duty to act under the Scrap Metal Dealers Act 2013 which is due to come into force on 1<sup>st</sup> October 2013.

#### 8. **Financial and Resource Implications**

A fee will now be set for all scrap metal dealer licences.

Depending on the number of applications received this could place an additional burden on licensing staff but it is not expected that there will be many applications and as each licence lasts for three years there should be not an excessive amount of additional work associated with the new legislation.

#### 10. **Major Risks**

None identified.

#### 11. **Appendices**

Appendix A: LGA Guidance

Appendix B: LGA Fee Setting Guidance

#### 15. **Background Papers**

Scrap Metal dealers Act 1964

LGA guide to the Scrap Metal dealers Act 2013: Applications

Scrap Metal Dealer Act 2013: Guidance of licence fee charges